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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 45725 & 45726
Plaintiff-Respondent,)	
)	ADA COUNTY NOS. CR01-16-27437 &
v.)	CR01-17-00796
)	
ANTHONY JAMES IRA)	APPELLANT'S BRIEF
BARCLAY,)	
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Anthony Barclay pled guilty to failure to notify of a death, destruction of evidence, and burglary. The district court imposed an aggregate sentence of twenty-five years, with eighteen years fixed. Mr. Barclay appeals, and he asserts the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

In No. 45725 (CR01-16-27437), the State charged Mr. Barclay with three counts of burglary, three counts of grand theft, and one count of petit theft. (R., pp.48-50.) In No. 45726

(CR01-17-00796), the State charged Mr. Barclay with the failure to notify of a death, destruction of evidence, and conspiracy to commit destruction of evidence. (R., pp.216–18.) The cases were consolidated. (R., pp.14, 214.)

Pursuant to a plea agreement, Mr. Barclay pled guilty to one count of burglary (Count 2) in No. 45725 and failure to notify of a death and destruction of evidence in No. 45726. (Tr. Vol. I,¹ p.14, L.5–p.17, L.23.) The State agreed to dismiss the remaining charges. (Tr. Vol. I, p.6, Ls.5–6.)

At sentencing, the State recommended the maximum aggregate sentence of twenty-five years fixed. (Tr. Vol. II, p.65, Ls.16–17.) Mr. Barclay did not request a specific sentence, but opposed the State’s recommendation of imposing the maximum possible sentence. (*See* Tr. Vol. II, p.57, L.16–p.68, L.2.) In No. 45726, the district court sentenced Mr. Barclay to ten years fixed for the failure to notify of a death and five years fixed for destruction of evidence, to be served consecutively. (Tr. Vol. II, p.77, Ls.2–18.) In No. 45725, for the burglary charge, the district court sentenced him to ten years, with three years fixed, to be served consecutively to the sentences in No. 45726. (Tr. Vol. II, p.77, L.19–p.78, L.2.) In total, Mr. Barclay was sentenced to twenty-five years in prison, with eighteen years fixed. (Tr. Vol. II, p.78, Ls.3–5.)

Mr. Barclay timely appealed from the district court’s judgment of conviction. (R., pp.79–81, 85–86, 248–50, 252–53.)

ISSUES

Did the district court abuse its discretion when it sentenced Mr. Barclay to an aggregate term of twenty-five years in prison, with eighteen years fixed, for failure to notify of a death, destruction of evidence, and burglary?

¹ There are two transcripts on appeal. The first, cited as Volume I, contains the entry of plea hearing. The second, cited as Volume II, contains the sentencing hearing.

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Barclay To An Aggregate Term Of Twenty-Five Years, With Eighteen Years Fixed, For Failure To Notify Of A Death, Destruction Of Evidence, And Burglary

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Barclay’s sentences meet, but do not exceed, the statutory maximum. *See* I.C. § 19-4301A(3) (ten years maximum for failure to notify of a death); I.C. § 18-2603 (five years maximum for destruction of evidence); I.C. § 18-1403 (ten year maximum for burglary). Accordingly, to show that the sentence imposed was unreasonable, Mr. Barclay “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011). “The decision of whether to impose sentences concurrently or consecutively is within the sound

discretion of the trial court.” *State v. Helms*, 130 Idaho 32, 35 (Ct. App. 1997); *see also* I.C. § 18-308.

Here, Mr. Barclay asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment in light of the mitigating factors, such as his young age, minimal criminal record, serious mental health and substance abuse issues, family support, and remorse for the crime.

Mr. Barclay’s young age and lack of a serious criminal record support a lesser sentence. Mr. Barclay was just nineteen years old when he committed the instant offenses. (PSI Vol. I,² p.1.) Young age is a mitigating circumstance. *State v. Dunnagan*, 101 Idaho 125, 126 (1980). Similarly, “[t]he absence of a criminal record is a mitigating factor that courts consider.” *State v. Miller*, 151 Idaho 828, 836 (2011). “It has long been recognized that ‘[t]he first offender should be accorded more lenient treatment than the habitual criminal.’” *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (alteration in original) (quoting *State v. Nice*, 103 Idaho 89, 91 (1982)). Here, as indicated in the PSI, Mr. Barclay had some prior juvenile offenses, but this was his first adult felony conviction. (PSI Vol. I, pp.9–12.) Although Mr. Barclay was young and had a limited criminal record, the district court still imposed the maximum sentence for each offense. Mr. Barclay submits the district court failed to give adequate consideration to his age and minor criminal history and imposed an excessive sentence under the circumstances.

Mr. Barclay committed these offenses as a troubled teenager with serious mental health and substance abuse issues. Mr. Barclay had an “amazing childhood with wonderful parents,”

² Due to the length of the presentence materials, it has been divided into two separate PDFs. The first, labeled “Barclay 45725 & 45726 psi,” will be cited as “PSI Vol. I.” The second, labeled “Barclay 45725 & 45726 psi add,” will be cited as “PSI Vol. II.”

and he excelled at a charter school from sixth to eighth grade. (PSI Vol. I, pp.13–14.) Once he transferred to public school in the ninth grade, his life started to go downhill. (PSI Vol. I, pp.14–15.) Mr. Barclay became depressed, started cutting himself, and began to use drugs. (PSI Vol. I, p.14.) He started drinking alcohol, smoking marijuana, and ingested methamphetamine. (PSI Vol. I, pp.20–21.) He would try whatever “got me high,” including prescription medication, heroin, and hallucinogens. (PSI Vol. I, p.21.) Fortunately, Mr. Barclay went to inpatient rehab and got sober. (PSI Vol. I, pp.14–15.) By eleventh grade, he had a sponsor, attended meetings every day, and co-ran a Narcotics Anonymous group. (PSI Vol. I, pp.14–15.) He was diagnosed with major depressive disorder.³ (PSI Vol. I, pp.19–20, 29, 32–33.) He took anti-depressants and started to rebuild his relationship with his family. (PSI Vol. I, pp.14–15.) Mr. Barclay believed he was “the best” he had ever been, so he decided to stop taking his anti-depressant medication. (PSI Vol. I, p.15.) He recognized he got “over confident and let my pride get the better of me.” (PSI Vol. I, p.15.) Around the same time he stopped taking his medicine, his sponsor relapsed, he quit his job, and he dropped out of school. (PSI Vol. I, pp.15, 19.) He started hanging out with his “old bad friends” again and using drugs, culminating in the instant offenses. (PSI Vol. I, p.15.)

During his downward spiral, Mr. Barclay started to spend time with the mother of one of his high school friends. (PSI Vol. I, p.8.) This forty-year-old woman, Francis March, was the co-defendant in this case. (PSI Vol. I, p.9.) Her house was known as a “party house,” and she openly allowed high school students to use drugs and alcohol there. (PSI Vol. I, pp.9, 15.) Indeed, Ms. March introduced Mr. Barclay to methamphetamine and supplied him with drugs. (PSI Vol.

³ Mr. Barclay has a family history of depression—his mother was diagnosed with depression and his paternal grandmother committed suicide. (PSI Vol. I, p.29.)

I, p.21.) Once Mr. Barclay relapsed and dropped out of school, he lived at Ms. March's house until they got evicted. (PSI Vol. I, p.14.) Ms. March also had a sexual relationship with Mr. Barclay for eight or nine months. (PSI Vol. I, p.8.) Mr. Barclay's family, who is very supportive of him, firmly believe Ms. March's control over and manipulation of Mr. Barclay greatly influenced to his criminal conduct in this case. (PSI Vol. I, pp.152, 153, 5703-04; *see also* Tr. Vol. II, p.61, Ls.1-4, p.62, Ls.1-14.) Notwithstanding Ms. March's negative impact on Mr. Barclay, Mr. Barclay has accepted responsibility for his actions. (*See also* Tr. Vol. II, p.61, Ls.5-25, p.63, Ls.6-13.)

Mr. Barclay's troubled teenage years, substance abuse issues, and mental health condition are proper considerations in favor of mitigation. A sentencing court must give "proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem." *State v. Nice*, 103 Idaho 89, 91 (1982). The impact of substance abuse on the defendant's criminal conduct is "a proper consideration in mitigation of punishment upon sentencing." *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Further, Idaho Code § 19-2523 requires the sentencing court to consider the defendant's mental health condition if it is a significant factor, and the record must show that the sentencing court adequately considered this factor when imposing a sentence. I.C. § 19-2523; *Delling*, 152 Idaho at 132-33. Finally, the Court of Appeals has recognized that a defendant's "extremely troubled childhood is a factor that bears consideration at sentencing." *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). In light of this information here regarding Mr. Barclay's substance abuse and mental illness, he submits the district court abused its discretion by imposing an unreasonable sentence.

Although Mr. Barclay has a long road ahead to recovery, he expressed remorse and accepted responsibility for his role in the crimes. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). In the PSI, he stated that he felt horrible, shameful, and angry with himself. (PSI Vol. I, p.8.) He recognized that he could not “take back” his actions. (PSI Vol. I, p.22.) At the sentencing hearing, he apologized to the family and friends of the victim. (Tr. Vol. II, p.68, Ls.8–13.) He also included numerous letters to show his growth and self-help since his incarceration. (PSI Vol. I, pp.158–89.) Included in these documents was a detailed request to obtain his GED. (PSI Vol. I, pp.159–61.) He also wrote a list of “things I have been responsible for in my life” and other reflections. (PSI Vol. I, pp.162–64, 168–69.) He explored various methods to stay sober and become a productive member of society. (PSI Vol. I, pp.165–67, 170–81.) In addition, he included a church workbook and positive letter from a church mentor. (PSI Vol. I, pp.182–91.) Mr. Barclay hoped to become more devoted to his faith, graduate from a rehabilitation program, and continue his education. (PSI Vol. I, p.22.)

Moreover, Mr. Barclay has an extremely supportive family, which also supports a lesser term of imprisonment. *Shideler*, 103 Idaho at 594–95 (family support and good character as mitigation); *see State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (district court considered family and friend support as mitigating circumstance). Mr. Barclay stated his father was his “idol.” (PSI Vol. I, p.13.) His father wrote a letter of support to the district court. (PSI Vol. II, pp.5703–04.) His stepmother also wrote a letter of support, and his mother included photographs of Mr. Barclay as a child, school records, and notes from his childhood. (PSI Vol. I, pp.95, 96–97, 98–150.) Additionally, his grandfather wrote a letter to the court describing Mr. Barclay’s change in attitude since his incarceration. (PSI Vol. I, pp.151–52.) He explained that Mr. Barclay

immediately agreed to visits with a deacon from the Catholic Church. (PSI Vol. I, p.152.) Mr. Barclay requested a Bible and other self-help books. (PSI Vol. I, p.152.) Further, his grandfather informed the court of Mr. Barclay's strong support network, including his family and the church. (PSI Vol. I, p.152.) His grandfather was confident that Mr. Barclay could turn his life around. (PSI Vol. I, p.152.) The deacon wrote a letter to the court as well. (PSI Vol. I, p.154.) He stated that he had been visiting Mr. Barclay for about one year and that Mr. Barclay understood that he needed to have a better relationship with God and his family and had to work hard every day to get back on track. (PSI Vol. I, p.154.)

In summary, Mr. Barclay maintains the district court abused its discretion by imposing an aggregate sentence of twenty-five years in prison, with eighteen years fixed. At only nineteen years old when he committed these offenses, Mr. Barclay will serve a sentence six years longer than the length of his natural life. He will not be eligible for parole until he is thirty-five years old. In light of the mitigating circumstances, Mr. Barclay submits the district court abused its discretion by imposing an unreasonable sentence.

CONCLUSION

Mr. Barclay respectfully requests this Court reduce his sentences as it deems appropriate. Alternatively, he respectfully requests this Court vacate his judgments of conviction and remand these cases for a new sentencing hearing.

DATED this 24th day of May, 2018.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of May, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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DISTRICT COURT JUDGE
E-MAILED BRIEF

D DAVID LORELLO
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas